

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, DC 20554

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In the Matter of

MAY 13 2003

Amendment of Section 73.202(b)
 Table of Allotments
 FM Broadcast Stations
 (Shawnee and Topeka, Kansas)

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MB Docket No. 03-26
 RM - 10638

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

To: Assistant Chief, Audio Division
 Media Bureau

MOTION TO STRIKE

Cumulus Licensing Corp. ("Cumulus"), licensee of Station KMAJ-FM, Topeka, Kansas, by its counsel, hereby moves to strike the late filed comments submitted by Allur-Kansas City, Inc. ("Allur") on May 1, 2003. Allur claims that there is new information which justifies filing these comments 45 days after the comment deadline. However, as will be discussed, the "new information" is based on speculation and has no decisional significance on the outcome of this proceeding.

1. The Commission requires that a separate motion to accept a late filed pleading must be submitted pursuant to Section 1.415.¹ Allur has not filed such a motion. As for the Allur letter, the basis for the late filing is contrived. Nothing has happened since the close of the comment period to place any doubt on the merits of Cumulus' request to serve Shawnee, Kansas. The Commission's allocation policies only require that the new community be independent. Cumulus demonstrated that Shawnee is an independent community. The possible new location of the KMAJ transmitter site is irrelevant as long as it meets the Commission's principal

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¹ Madisonville, College Station, Giddings, Bay City, Columbus, Edna, Garwood, Palacios and Sheridan, Texas, 18 FCC Rcd 640 (2003) at note 7.

community coverage and spacing rules.² Cumulus could propose a transmitter site in downtown Kansas City and it would not have, by itself, any decisional significance if all other requirements are met.

2. Allur speculates that "the logical conclusion to be drawn from Cumulus' participation in the KMJK application proceeding is that its long term objective is to locate its facility further to the east, closer to Kansas City ..." On that basis, Allur asserts that Shawnee, Kansas is not sufficiently independent of the Kansas City Urbanized Area to warrant a first local service preference under the Commission's allotment priorities. Yet, Allur offers no evidence that Cumulus' Tuck showing was inadequate. Allur provides no evidence as to the relative size and proximity factors nor of the eight part independence factors. Allur could have filed a timely pleading challenging Cumulus' evidence of Shawnee's independence but it chose not to do so. As indicated earlier, the proposed transmitter site is not a Tuck factor. On the other hand, Cumulus has provided a compelling showing of Shawnee's independence and Allur's failure to dispute the showing concedes the point.

3. All that Cumulus did in its objection to Allur's application is to point out that the Station KMJK application was prematurely filed and that due to the Commission's strict cut-off procedures for minor change applications it is unfair for Allur to file early. That issue will be considered in the context of the Station KMJK application proceeding (BPH20030324ADA). Allur knows that it filed prematurely and has filed this letter to send a message to Cumulus that it will reciprocate with a filing. Cumulus has not decided whether it will file an application to specify a different transmitter site than the one listed in the rule making proceeding and any allegations to the contrary are pure speculation. All that Cumulus seeks is the opportunity to

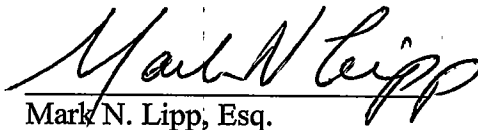
² Warrenton and Enfield, North Carolina and LaCrosse and Powhatan, Virginia, 13 FCC Rcd 13889 (1998) at para. 8; Oraibi and Leupp, Arizona, 14 FCC Rcd 13547 (1999) at para. 6.

specify a new site closer to Shawnee depending on the circumstances that exist at the appropriate time. Allur does not have the right to abuse the Commission's processes by making unsupported allegations so as to delay the instant proceeding.

Accordingly, the Commission should discourage such abusive filings by granting the proposal to reallocate Channel 299C1 to Shawnee, Kansas and modify KMAJ-FM's license without delay.

Respectfully submitted,

CUMULUS LICENSING CORP.

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Its Counsel

May 13, 2003

CERTIFICATE OF SERVICE

I, Lisa M. Balzer, a secretary in the law firm of Vinson & Elkins, do hereby certify that I have on this 13th day of May, 2003 caused to be mailed by first class mail, postage prepaid, copies of the foregoing "Motion to Strike" to the following:

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